

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, California 93401**

DRAFT ORDER NO. R3-2012-0041

**ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF THE
SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
SAN LUIS OBISPO COUNTY**

The California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board), having held a public hearing on September 7, 2012, to receive evidence and comments on the allegations contained in Administrative Civil Liability Complaint No. R3-2012-0030, dated June 19, 2012, having considered all the evidence and public comment received, and on the recommendation for administrative assessment of Civil Liability in the amount of \$1,408,007.50, finds as follows:

1. The Discharger's wastewater treatment facility, located adjacent to the Oceano County Airport and the Pacific Ocean in Oceano, California is subject to Waste Discharge Requirements Order No. R3-2009-0046, NPDES Permit No. CA0048003, adopted on October 23, 2009, by the Central Coast Water Board and the State Water Resources Control Board Order (State Water Board) No. 2006-0003-DWQ, "Statewide General Waste Discharge Requirements for Sanitary Sewer Systems."
2. On December 19, 2010, the Discharger's WWTP influent pump station automatically shut down after floodwater entered an electrical conduit leading into a pump motor control system in the WWTP influent pump station. The penetrating floodwater shorted a critical motor control component (shunt switch) which then resulted in tripping a large main circuit breaker that supplied power to all four influent pumps located in the pump station.
3. The resulting loss of power to all four influent pumps caused untreated sewage to surcharge upstream into the Discharger's collection system and overflow, discharging untreated sewage from the collection system into the environment. Additionally, the Discharger documented and certified six sewer backups where untreated sewage was discharged inside six residential homes through private sewer service lateral connections. The total discharge of sewage between December 19th and 20th is estimated at 1,139,825 gallons (December 2010 Sewer Overflow).

4. In response to the December 2010 Sewer Overflow, the Discharger submitted a spill report to the Central Coast Water Board on January 3, 2011. On March 7-8, 2011, State Water Board staff inspected the Discharger's WWTP and collection system facilities.
5. On April 18, 2011, the Central Coast Water Board issued a Notice of Violation and a 13267 Letter requiring the Discharger to submit a technical report concerning the December 19, 2010, discharge of untreated sewage from its collection system. In response, the Discharger submitted a technical report dated May 31, 2011, detailing the nature, circumstances, extent and gravity of the unauthorized discharge of untreated sewage.
6. The Discharger is required to properly maintain, operate and manage its sanitary sewer collection system in compliance with the Regional Water Board Order No. R3-2009-0046, NPDES Permit No. CA0048003 and the Sanitary Sewer Collection System Order, and is required by the Sanitary Sewer Collection System Order to provide adequate capacity to convey base flows and peaks flows, including flows related to wet weather.
7. The discharge of untreated sewage to waters of the United States is a violation of the requirements in R3-2009-0046, section 301 of the Clean Water Act, CWC section 13376, and the Sanitary Sewer Collection System Order. Violations of these requirements are the basis for assessing administrative civil liability pursuant to Water Code section 13385.
8. Additionally, the Discharger violated section A.6 of the Sanitary Sewer Collection System Order Amended Monitoring and Reporting Program, which states, "All SSOs that meet the above criteria for Category 2 SSOs must be reported to the Online SSO Database within 30 days after the end after the end of the calendar month in which the SSO occurs." The six individual sewer backup reports were not certified in the Online SSO Database (CIWQS) until 401 days after the December 2010 Sewer Overflow. Violations of this requirement are the basis for assessing administrative civil liability pursuant to Water Code section 13268.

MAXIMUM CIVIL PENALTY

9. California Water Code Section 13385 authorizes the Central Coast Water Board to administratively impose civil liability in an amount not to exceed \$10,000 for each day in which any person violates an NPDES permit. Where there is a discharge, section 13385 authorizes the Central Coast Water Board to administratively impose additional liability of ten dollars per gallon. The maximum liability in this case is \$11,388,250.

PENALTY METHODOLOGY

10. Pursuant to California Water Code Section 13385(e), the Central Coast Water Board must consider the following factors in determining the amount of liability for the violations:

- Nature, circumstances, extent, and gravity of the violations,
- Whether the discharge is susceptible to cleanup or abatement,
- Degree of toxicity of the discharge,
- Discharger's ability to pay,
- Effect on the Discharger's ability to continue in business,
- Voluntary cleanup efforts undertaken by the Discharger,
- Discharger's prior history of violations,
- Discharger's degree of culpability,
- Economic benefit or savings, if any, resulting from the violation, and
- Other matters that justice may require.

11. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in Water Code section 13327 and section 13385, subdivision (e). The staff report entitled *Technical Report for Noncompliance with Central Coast RWQCB Order No. R3-2009-0046 and State Water Resources Control Board Order No. 2006-0003-DWQ, "Statewide General Waste Discharge Requirements for Sanitary Sewer Systems", Unauthorized SSO occurring on December 19-20, 2010*, dated June 2012, is included in Attachment 3 of the Staff Report and incorporated herein, and analyzes the violations under the Enforcement Policy's penalty calculation methodology. This methodology is set forth in detail below:

1. Step 1 – Potential for Harm for Discharge Violations

a. Factor 1: Harm or Potential for Harm to Beneficial Uses (5)

This score evaluates direct or indirect harm or potential for harm from the violation. The estimated discharge of 1,139,825 gallons of untreated sewage entered the Oceano Lagoon, Meadow Creek, Arroyo Grande Creek Estuary, and the Pacific Ocean. In addition, the sewage entered at least six private residences and potentially caused human health risks. San Luis Obispo County posted signs warning the public of the sewage spill and rain advisory on all main beach entrances and on all advisory boards for nine days. The REC-1 and REC-2 beneficial uses of the beaches were restricted for more than five days. Therefore, there was a high threat to beneficial uses and a score of 5 or "major" is appropriate.

b. Factor 2: Physical Chemical, Biological or Thermal Characteristics of the Discharge (3)

Raw sewage contains microbial pathogens known to be harmful public health including, but not limited to, the following:

- Bacteria: campylobacter, E. coli, vibrio cholera, salmonella, S.typhi, shigella, yersinia
- Parasites: cryptosporidium, entamoeba, giardia
- Viruses: adenovirus, astrovirus, noravirus, echovirus, enterovirus, reovirus, rotavirus

Raw sewage can cause illness including abdominal cramps, vomiting, diarrhea, high fever, and dehydration. Additionally, it can cause disease such as gastroenteritis, salmonellosis, typhoid fever, pneumonia, shigellosis, cholera, bronchitis, hepatitis, aseptic meningitis, cryptosporidium, amoebic dysentery, giardiasis, and even death.

Raw sewage can also cause environmental impacts such as a loss of recreation and can be detrimental to aquatic life support, can result in organic enrichment, and can also result in exposure to floatable inorganic objects (e.g. condoms, tampons, medical items (syringes)).

The degree of toxicity in untreated sewage poses a direct threat to human and ecological receptors. Accordingly, a score of 3 is appropriate.

c. Factor 3: Susceptibility to Cleanup and Abatement (1)

Less than 50% of the discharge was susceptible to cleanup or abatement due to the rising floodwaters and multiple discharge points which made cleanup or recovery impossible. Therefore a score of 1 is assigned.

Based on the above determinations, the **Potential for Harm final score** for the violations is [9]

$$(5) + (3) + (1) = 9$$

$$= \textit{Potential for Harm}$$

2. Step 2 – Assessment for Discharge Violations

Water Code section 13385, subdivision (c) states that civil liability may be imposed administratively by a regional board pursuant to Article 2.5 of Chapter 5 in an amount not to exceed the sum of ten thousand dollars (\$10,000) for each day in

which the violation occurs and \$10 for each gallon discharged but not cleaned up that exceeds 1,000 gallons.

Per Gallon Assessment

To calculate the initial liability amount on a per gallon basis, a **Per Gallon Factor** is determined from Table 1 of the Enforcement Policy (page 14) by using the **Potential for Harm score** (step 1) and the extent of **Deviation from Requirement** (minor, moderate, or major) of the violation. The Per Gallon Factor is then multiplied by the number of gallons subject to administrative civil liability multiplied by the maximum per gallon liability amount.

a. Deviation from Requirement (moderate)

Prohibition C.1 of Order No. 2006-0003-DWQ states that, “[a]ny SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.” While the Discharger demonstrated a general intent to comply with the discharge requirements, the Discharge knew of the risk of flooding and the issue of the underground utility boxes containing electrical cables. The Discharger did not implement the proposed improvement project that would have prevented the December 2010 Sewer Overflow, and thus partially compromised the above prohibition in their permit. Therefore the score of “moderate” is appropriate.

b. Per Gallon Factor (.5)

Using a Potential for Harm score of “9” and a “Moderate” Deviation from Requirement, a Per Gallon Factor of 0.5 is selected from Table 1 of the Enforcement Policy.

c. Maximum / Adjusted Maximum per gallon liability amount (\$2.00/gal)

The maximum per gallon liability amount allowed under Water Code section 13385, subdivision (c) is \$10 for each gallon discharged to waters of the United States but not cleaned up that exceeds 1,000 gallons. The Enforcement Policy recommends a maximum per gallon penalty amount of \$2.00 per gallon for high volume sewage spill and storm-water discharges.

The Enforcement Policy also states, however, “[w]here reducing these maximum amounts results in an inappropriately small penalty, such as dry weather discharges or small volume discharges that impact beneficial uses, a higher amount, up to the maximum per gallon amount, may be used.”

A \$2.00 per gallon maximum for this sewage spill resulted in an appropriate penalty. Therefore, a \$2.00 adjusted per gallon liability amount is used.

Using the information above, the **Initial Liability assessed per gallon is calculated to be \$1,138,825.**

(Per Gallon Factor) x (Gallons subject to liability) x (Maximum per gallon liability amount)

= Initial Liability

= (.5) x (1,138,825) x (2.00 / gallons) = \$1,138,825 *Initial Liability (Per Gallon Assessment)*

Per Day Assessment

To calculate the initial liability amount on a per day basis, a **Per Day Factor** is determined from Table 2 of the Enforcement Policy (page 15) by using the **Potential for Harm score** (step 1) and the extent of **Deviation from Requirements** (minor, moderate, or major) of the violation.

- a. Deviation from Requirement (9)

The deviation from requirement is (Moderate).

- b. Per Day Factor (.5)

A Per Day Factor of (0.5) is selected from Table 2 of the Enforcement Policy.

Using the information above, the **Initial Liability assessed per day is calculated to be \$10,000:**

(Per Day Factor) x (Days subject to liability) x (Maximum per day liability amount)

= (.5) x (2 days) x (\$10,000 / day)

= \$10,000 *Initial Liability (Per Day Assessment)*

3. Step 3 – Per Day Assessments for Non-Discharge Violations

The Discharger's failure to certify and comply with the Amended MRP requirements for six sewer backups into residential structures resulting from the December 2010 Sewer Overflow. The Amended MRP required the Discharger to certify each of the six individual sewer backup reports in the CIWQS SSO Online database within 30 days after the end of the calendar month in which the SSO event occurred, and the Discharger did not certify each report until 401 days has passed.

To calculate the initial liability amount on non-discharge violation, a **Per Day Factor** is determined from Table 3 of the Enforcement Policy (page 16) by using the

Potential for Harm score (minor, moderate, or major) and the extent of **Deviation from Requirements** (minor, moderate, or major) of the violation.

a. Factor 1: Potential for Harm (Minor)

The sewage that entered private residences did not reach waters of the United States, and so the characteristics of the violation present a minor threat to beneficial uses. A factor of “minor” is appropriate.

b. Deviation from Requirement (Major)

Since the Discharger was 401 days late in certifying each report, the requirement has been rendered ineffective. Therefore a factor of “major” is appropriate.

c. Per Day Factor (0.35)

The midrange score in Table 3 is 0.35.

d. Number of Days (180)

In consideration of the Discharger’s overall demonstrated compliance with the Amended MRP for the initial December 2010 Sewer Overflow reporting, the Central Coast Water Board reduced the maximum applicable number of violation days for each of the six sewer backups to 30 days each for a total of 180 days violation.

e. Statutory maximum per day

Under Water Code section 13268, the maximum civil liability for these violations is \$1,000 per day.

Using the information above, the **Initial Liability assessed per day is calculated to be \$63,000:**

(Per Day Factor) x (Number of Days) x (Maximum per day liability amount)

= (.35) x (180 days) x (\$1,000 / day)

= *\$63,000 Initial Liability (Per Day Assessment)*

The total initial liability for both violations is \$1,211,825.00

4. Step 4 – Adjustment Factors

Staff considered certain Conduct Factors to calculate adjustments to the amount of the Initial Amount of the Administrative Civil Liability as follows:

a. Culpability (1.1)

The Enforcement Policy suggests an adjustment multiplier between 0.5 and 1.5 depending on whether the discharge was a result of an accident or the discharger's intentional/negligent behavior. The Discharger failed to provide adequate protection of its equipment from 100-year frequency floods as required under its Permit. The Discharger also failed to ensure implementation of standard operating procedures when the Discharger failed to ensure that the emergency bypass pump valve remained in the "open" position during standby mode. The Discharger also failed to comply with the Sanitary Sewer Collection System Order to provide adequate sampling to determine the nature and impact of the release. The Discharger had prior knowledge of the potential risks associated with the electrical wires and the failure to protect plant equipment from 100-year frequency flood as required by its discharge permit. Therefore, this factor should be adjusted to a higher multiplier of 1.1 for negligent behavior.

b. Cleanup and Cooperation (1)

The Discharger responded quickly by diverting flows to the plant and secured additional pumps from other agencies and informed the public regarding the sewage spill. The Discharger also timely responded to the NOV and 13267 letter. Therefore, a multiplier of 1.0 is appropriate.

c. History of Violations (1)

The Discharger had no history of sewage overflow violations in recent years. Therefore, a factor of 1.0 is appropriate.

The initial base liability per gallon and initial base liability per day are multiplied by the above factors to determine **Revised Liability amounts of \$1,333,007.50.**

Revised Per Gallon Assessment

(Initial Liability) x (Culpability) x (Cleanup and Cooperation) x (History of Violations)

= \$\$\$\$ *Revised Liability Per Gallon Assessment*

(1,138,825) x (1.1) x (1) x (1) = \$1,252,707.50

Revised Per Day Assessment (Discharge and Non-Discharge Violations)

Discharge Violations:

(Initial Liability) x (Culpability) x (Cleanup and Cooperation) x (History of Violations)

= \$\$\$\$ Revised Liability Day Assessment

(10,000) x (1.1) x (1) x (1) = \$11,000.00

Non-Discharge Violations:

(Initial Liability) x (Culpability) x (Cleanup and Cooperation) x (History of Violations)

= \$\$\$\$ Revised Liability Day Assessment

(63,000) x (1.1) x (1) x (1) = \$69,300.00

5. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by adding the revised liability amounts per gallon and per day. The **Total Base Liability is 1,333,007.50**.

(Revised Liability Per Gallon Assessment) + (Revised Liability Per Day Assessment for Discharge Violations) + (Revised Liability Per Day Assessment for Non-Discharge Violations)

\$1,252,707.50 + \$11,000 + \$69,300.00 = \$1,333,007.50

6. Step 6 – Ability to Pay and Ability to Continue in Business

If there is sufficient financial information to assess the violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator's ability to continue in business, the Total Base Liability Amount may be adjusted to address the ability to pay or to continue in business.

Sufficient evidence was presented that the Discharger could pay the proposed penalty. Accordingly, the Total Base Liability Amount was not adjusted.

7. Step 7 – Other Factors as Justice May Require

If the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for “other factors as justice may require,” but only if express findings are made to justify this. In addition, the costs of investigation and enforcement are “other factors as justice may require,” and should be added to the liability amount.

Staff costs incurred by the Central Coast Regional and State Water Resources Control Board are \$75,000 and are added to the Total Base Liability Amount, bringing the liability adjusted Total Base Liability Amount to **1,408,007.50**.

(Total Base Liability) + (Staff Costs) = *adjusted Total Base Liability*

\$1,333,007.50 + \$75,000 = \$1,408,007.50

8. Step 8 – Economic Benefit

The Economic Benefit Amount is any savings or monetary gain derived from the act or omission that constitutes the violation. The Enforcement Policy states that the adjusted Total Base Liability Amount shall be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.

The primary economic benefit for the Discharger was the delay of upgrading its electrical wiring system and protecting in-ground utility boxes from potential floodwaters as planned in 2004 for a total budget cost of \$200,000. The economic benefit gained from this project delay is calculated at \$177,209 based on US EPA's BEN model to calculate economic benefits for noncompliance with regulations.

9. Step 9 – Maximum and Minimum Liability Amounts

The **Minimum Liability Amount** is **\$194,930**. As mentioned in Step 8, the Enforcement Policy states that when making monetary assessments, the adjusted Total Base Liability Amount shall be at least 10 percent higher than the Economic Benefit Amount. Further, Water Code section 13385, subdivision (e) requires the Central Coast Water Board to recover any economic benefit or savings received by the violator.

The **Maximum Liability Amount** is **\$11,408,250**. The maximum administrative civil liability that may be assessed pursuant to Water Code section 13385, subdivision (c) is the sum of ten thousand dollars (\$10,000) for each day in which the violation occurs and \$10 for each gallon discharged but not cleaned up that exceeds 1,000 gallons. The maximum administrative civil liability that may be assessed pursuant to Water Code section 13268, subdivision (b)(1) is \$1,000 per day of violation.

10. Step 10 – Final Liability Amount

In accordance with the above methodology, the Central Coast Water Board finds that the **Final Liability Amount is \$1,408,007.50**. This Final Liability Amount is within the statutory minimum and maximum amounts.

12. This Order on Complaint is effective and final upon issuance by the Regional Board. Payment must be received by the Regional Board no later than thirty days from the date on which this Order is issued.
13. In the event that District fails to comply with the requirements of this Order, the Executive Officer or his/her delegee is authorized to refer this matter to the Office of the Attorney General for enforcement.
14. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000, et seq.) in accordance with the California Code of Regulations Title 14, Chapter 3, section 15321.

IT IS HEREBY ORDERED, pursuant to California Water Code section 13385 and 13268, that the South San Luis Obispo County Sanitation District is assessed administrative civil liability in the amount of \$1,408,007.50.

The Discharger shall submit a check payable to State Water Resources Control Board in the amount of **\$1,408,007.50** to *SWRCB Accounting, Attn: Enforcement, P.O. Box 100, Sacramento, California 95812-0100* by **October 7, 2012**. A copy of the check shall also be submitted to *Regional Water Quality Control Board, Attn: Harvey Packard, 895 Aerovista Place, Suite 101, San Luis Obispo, California 93401* by **October 7, 2012**. The check shall be made out to the *Clean Up and Abatement Account* and shall include the administrative liability Order No. R3-2012-0041.

Any person aggrieved by this action of the Central Coast Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of the order, except that if the thirtieth day following the date of the order falls on a Saturday, Sunday, or state holiday, the petition must be received by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the internet at http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

I, Kenneth A. Harris Jr., Interim Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the Central Coast Water Board on September 7, 2012.

Kenneth A. Harris Jr.
Interim Executive Officer